

**BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

RONALD L. PRICE, TRUSTEE, R. JEAN ) PRICE FAMILY TRUST, ) ) Appellant, ) ) v. ) ) GAGE COUNTY BOARD OF ) EQUALIZATION, ) ) Appellee. )	)	Case Nos. 09A 056, 09A 057, 09A 058, 09A 060, 09A 061, 09A 062 & 09A 063  DECISION AND ORDER AFFIRMING THE DECISIONS OF THE GAGE COUNTY BOARD OF EQUALIZATION
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The above-captioned cases were called for a hearing on the merits of appeals by Ronald L. Price, Trustee, R. Jean Price Family Trust ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on July 20, 2010, pursuant to an Order for Hearing and Notice of Hearing issued April 26, 2010. Commissioner Warnes, Vice-Chairperson of the Commission, was the presiding hearing officer. Commissioner Wickersham, Chairperson of the Commission, was absent. Commissioner Warnes, as Vice-Chairperson acting in the absence of the Chairperson, designated Commissioners Warnes, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Salmon was excused. Commissioner Hotz was present. The appeal was heard by a quorum of a panel of the Commission.

Ronald L. Price, Trustee of R. Jean Price Family Trust, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Randall R. Ritnour, County Attorney for Gage County, Nebraska, was present as legal counsel for the Gage County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits, and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Reissue 2009). The final decision and order of the Commission in the consolidated cases is as follows.

**I.  
ISSUES**

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is less than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining taxable value of the subject property is unreasonable or arbitrary; and

The taxable value of the subject property on January 1, 2009.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining the equalized taxable value of the subject property is unreasonable or arbitrary;

Whether the equalized taxable value of the subject property was determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1; and

The equalized taxable value of the subject property on January 1, 2009.

**II.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeals to maintain them.
2. The parcels of real property to which the above captioned appeals pertain are ("the Subject Property") described in the tables below.
3. Taxable value of each parcel of the subject property placed on the assessment roll as of January 1, 2009, ("the assessment date") by the Gage County Assessor, value as proposed in timely protests, and taxable value as determined by the County Board is shown in the following tables:

**Case No. 09A 056**

Description: NW EX NW NW W OF RTY & EX RTY & EXC E 52.73 AC (84.81 AC), Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$133,610.00	\$134,283.00	\$133,610.00
Home Site	\$10,000.00	Included in Land	\$10,000.00
Residence	\$78,690.00	\$80,425.00	\$78,690.00
Farm Site	\$6,000.00	Included in Land	\$6,000.00
Outbuilding	\$1,735.00	Included in Residence	\$1,735.00
Total	\$230,035.00	\$214,708.00	\$230,035.00

**Case No. 09A 057**

Description: N ½ SW E OF RTY (53.00 AC), Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$82,205.00	\$73,278.00	\$82,205.00
Total	\$82,205.00.	\$73,278.00	\$82,205.00

**Case No. 09A 058**

Description: E 52.73 AC IN NW 1/4 13-6-6 (52.73 AC), Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$81,085.00	\$72,511.00	\$81,085.00
Total	\$81,085.00	\$72,511.00	\$81,085.00

**Case No. 09A 060**

Description: SPC 20-6-7 E ½ NE (80 AC), Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$112,310.00	\$111,736.00	\$112,310.00
Home Site	\$10,000.00	Included in Land	\$10,000.00
Residence	\$83,635.00	\$88,570.00	\$83,635.00
Farm Site	\$2,250.00	Included in Land	\$2,250.00
Outbuilding	\$4,935.00	Included in Residence	\$4,935.00
Total	\$213,130.00	\$200,306.00	\$213,130.00

**Case No. 09A 061**

Description: SEC 20-6-7 SW NE (40.00 AC), Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$75,235.00	\$66,025.00	\$75,235.00
Total	\$75,235.00	\$66,025.00	\$75,235.00

**Case No. 09A 062**

Description: SEC 20-6-7 NW NE (40.00 AC), Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$72,105.00	\$63,602.00	\$72,105.00
Total	\$72,105.00	\$63,602.00	\$72,105.00

**Case No. 09A 063**

Description: SEC 20-6-7 E ½ SE & NW SE & E ½ SW SE & E ½ NE SW EX 4.12 A (158.88 AC), Gage County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$241,180.00	\$212,221.00	\$241,180.00
Total	\$241,180.00	\$212,221.00	\$241,180.00

4. Appeals of the County Board's decisions were filed with the Commission.
5. The appeals were consolidated for hearing by order of the Commission.
6. An Order for Hearing and Notice of Hearing issued on April 26, 2010, set a hearing of the appeals for July 20, 2010, at 1:00 pm, CDST.

7. An Affidavit of Service, which appears in the records, of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
8. Taxable value of each parcel for the tax year 2009 is:

**Case No. 09A 056**

Agricultural land	\$133,610.00
Farm Site	\$6,000.00
Home Site	\$10,000.00
Residence	\$78,690.00
Outbuildings	\$1,735.00
Total	<u>\$230,035.00</u>

**Case No. 09A 057**

Agricultural land	\$82,205.00
Total	<u>\$82,205.00</u>

**Case No. 09A 058**

Agricultural land	\$81,085 .00
Total	<u>\$81,085.00</u>

**Case No. 09A 060**

Agricultural land	\$112,310.00
Farm Site	\$2,250.00
Home Site	\$10,000.00
Residence	\$83,635.00
Outbuildings	\$4,935.00
Total	<u>\$213,130.00</u>

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Agricultural land	\$75,235.00
Total	<u>\$75,235.00</u>

**Case No. 09A 062**

Agricultural land	\$72,105.00
Total	<u>\$72,105.00</u>

**Case No. 09A 063**

Agricultural land	\$241,180.00
Total	<u>\$241,180.00</u>

### III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Reissue 2009).
2. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2009).
3. “Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.” Neb. Rev. Stat. §77-112 (Reissue 2009).
4. “Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
5. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2009).

6. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).
7. Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).
8. "Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure." Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).
9. "Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:
  - (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
  - (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land." Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

10. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.” *Neb. Const.*, Art. VIII, §1.
11. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).
12. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).
13. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
14. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).
15. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

16. The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
17. In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).
18. If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgement. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).
19. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
20. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions

governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).

21. The presumption disappears if there is competent evidence to the contrary. *Id.*
22. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Reissue 2009).
23. Proof that the order, decision, determination, or action appealed from was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g., *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
24. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
25. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000).
26. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).
27. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

28. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).
29. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by the county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
30. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982) (determination of equalized taxable value); *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

#### **IV. ANALYSIS**

There are seven (7) parcels that make up the subject properties of this appeal. The Commission ordered consolidation of these parcels for purposes of the appeal hearing. Each of the seven parcels are classified as unimproved agricultural land and horticultural land for purposes of assessment, with the exception of two parcels which have improvements. The Taxpayer has not put into dispute the valuation of the improvements on these two parcels which are shown in Exhibit 9, pages 28 to 29 (09A-056), and Exhibit 9, pages 34 to 35 (09A-060). The

Taxpayer testified that only the valuation of the land is in dispute in the seven contested parcels.

The Taxpayer alleged in his testimony that Gage County should have granted special valuation of agricultural and horticultural land for 2009 as it did in 2008. His testimony was that he believed that Gage County had removed special valuation and that as a result the subject properties were over valued for 2009 by approximately 10%. The Taxpayer testified to this allegation and he also provided a written statement of this assertion in his letter of June 18, 2009 (E9:39 to 46).

The Commission's review of the Taxpayer's allegation shows that the subject properties had been qualified for special valuation in tax years prior to 2009. There is no evidence that the subject property was disqualified for special valuation in tax year 2009. The Deputy County Assessor testified that the special valuation of the subject properties never was removed. Each of the property record files for the subject properties show that each parcel is being valued as special value as shown by the "SV" preceding the year of assessment. However, the County Assessor for tax year 2009 determined that 75% of actual value of agricultural land and horticultural land was equal to 75% of its special value for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes. *2009 Reports and Opinions of the Property Tax Administrator, Gage County*, Exhibit 34, page 77.

The Taxpayer's testimony highlighted the fact that as recently as 2008 the County Assessor had come to a different conclusion and had determined for 2008 that there were nonagricultural and horticultural influences affecting the value of all of the agricultural and horticultural land in Gage County. This conclusion by the County Assessor is found in the *2008 Reports and Opinions of the Property Tax Administrator, Gage County*, Exhibit 34, pages 71-73.

The Taxpayer asks that the Commission deduce that special value should still be used in 2009 to reduce valuations based on the conclusions of the County Assessor of the need for special value in prior years. The Commission notes that “the prior year’s assessment is not relevant to the subsequent year’s valuation.” *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

The Commission finds that the Taxpayer has not presented competent evidence to show the County Board was incorrect when concluding for 2009 that 75% of actual value of agricultural land and horticultural land was equal to 75% of its special value for agricultural or horticultural purpose or uses without regard to the actual value the land would have for other purposes.

Special valuation is defined by Nebraska law as a “... special valuation for qualified agricultural or horticultural land so that the current assessed valuation of the land for property tax purposes is the value that the land would have without regard to the value the land would have for other purposes or uses.” Neb Rev Stat 77-1343. Section (5) of this statute states “Special valuation means the value that the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.”

Agricultural land and horticultural land is assessed at 75% of its actual value or at 75% of its special value of agricultural and horticultural purposes or uses without regard to the actual value the land would have for other purposes.

The question before the Commission is what is the correct assessed valuation regardless of whether the land is classified as special value. The Taxpayer testified that the actual value

determined by the County Board was too high and not equalized uniformly and proportionately with other comparable parcels in the County. The burden of the Taxpayer is to prove what the taxable value of the subject properties were on January 1, 2009 or in the alternative, that the equalized value is not uniform or proportionate to comparable properties in the county.

Fair market value is the value of the property if offered for sale upon the open market as between one who is ready and willing to sell but is not compelled to sell, and one who is ready, able and willing to buy but is not required to buy. *McArthur v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 96, 547 N.W.2d 716, 724 (1996)(Citations omitted).

Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

Actual value of real property for purposes of taxation may be determined using professionally accepted mass appraisal methods, including, but not limited to, (1) the sales comparison approach, taking into account factors such as location, zoning, and current functional use;(2) the income approach; and (3) the cost approach. This statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes. *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 18, 624 N.W.2d 63, 69 - 70 (2001). Neb. Rev. Stat. Section 77-112, (Reissue 2009).

The Taxpayer testified that he chose the income approach to value the subject property while the county had used the sales comparison approach. The County supported its sales comparison method with evidence of sales of alleged comparable parcels as shown on the

property record files for each parcel and the valuations for each soil type as determined from the County's sales file. (E8:73, E8:105, E8:117, E8:169, E8:201, E8:232 and E8:264).

The Income Approach can be defined as “a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. This conversion can be accomplished in two ways. One year's income expectancy can be capitalized at a market-derived rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate.” *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.143, (2002). The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield indicated value. *The Appraisal of Real Estate* 12<sup>th</sup> Edition, The Appraisal Institute, 2001, pp. 493 - 494. A variety of techniques may be used to quantify various components of any application of the approach. *Id.* at chs 20-24, (2001).

Three major methods are used to develop an indication of value using the income approach: direct capitalization; yield capitalization; and a discounted cash flow analysis. *Id.* The direct capitalization method produces an indication of value based on a single year's estimated income. *Id.* at 529. A yield capitalization method requires an analysis of income and expected returns over multiple years. *Id.* at 549. Discounted cash flow analysis is a refinement of the yield capitalization method in which a reversionary value is added to the indicated value of the

income stream. *Id.* at 569. A reversionary value is added on the assumption that the asset producing an income stream still exists and has value at the end of the period. *Id.* That value is discounted to present value as of the valuation date and added to the value of the income stream. *Id.* at ch 24.

An estimate of value using the income approach may also be obtained based on gross income and a gross income multiplier. *Id.* at 546-547. A gross income multiplier can be obtained by dividing the sale price of each comparable parcel by its potential gross income and analyzing the results. *Id.* at 547. The gross income of the property for which value is to be estimated is then multiplied by the gross income multiplier derived from the sales of comparable parcels. *Id.* at 546-547.

The Taxpayer testified that he used for income the “cash rent” provided to him by an employee of the Department of Revenue, which employee did not testify as to the accuracy, foundation or relevance of the values used for the cash rent or how they were determined. No independent evidence was provided of the cash rent provided to the Taxpayer of other comparable parcels in Gage County. A critical element of the Taxpayer’s income approach was the use of a capitalization rate from another county. The Taxpayer used this capitalization rate without evidence of its accuracy, foundation, or relevancy. (E9:48). No evidence of sales of Gage County parcels were provided to validate the capitalization rate which the Taxpayer chose to use. The Taxpayer on Exhibit 9, page 48, used the same capitalization rate that was used in Lancaster County. The only evidence provided by the Taxpayer as to why he used such a capitalization rate was that he testified that he had been told to do so by an employee of the Department of Revenue. The Commission does not give great weight to the use of a

capitalization rate which was chosen by the Taxpayer based on a third party who did not testify and provide evidence of the merits of its use.

The Commission has examined the evidence submitted by both parties and has weighed the relative probative value of each item of evidence. The Commission gives greater weight and credibility to the evidence provided by the County.

The assessor's value in proceedings before the County Board of Equalization is presumed to be correct. *Woods v. Lincoln Gas and Electric Co.*, 74 Neb. 526, 527 (1905); *Brown v. Douglas County*, 98 Neb. 299, 303 (1915); *Gamboni v. County of Otoe*, 159 Neb. 417, 431, 67 N.W.2d 489, 499 (1954); *Ahern v. Board of Equalization*, 160 Neb. 709, 711, 71 N.W.2d 307, 309 (1955). There is a presumption that the assessing official has performed his or her duties according to law. *See, State ex rel. Bee Building Co. v. Savage*, 65 Neb. 714 (1902); *Woods v. Lincoln Gas & Electric Co.*, 74 Neb. 526 (1905); *Brown v. Douglas Co.*, 98 Neb. 299 (1915); *Gamboni v. County of Otoe*, 159 Neb. 417 (1954); *Ahern v. Board of Equalization*, 160 Neb. 709 (1955); *Collier v. Logan County*, 169 Neb. 1 (1959); *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415 (1965).

"There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. The presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board. The burden of

persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.” *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999). The Board, based upon the applicable law, need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998); Neb. Rev. Stat. §77-5016(7)(Reissue 2009).

The Commission finds that the Taxpayer has not provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination.

The Commission also finds that the Taxpayer has not provided clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. The appeal of the Taxpayer is denied.

## V. CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its official duties and acted on sufficient competent evidence to justify its actions.

4. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decisions of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The decisions of the County Board determining taxable values of the parcels comprising subject property as of the assessment date, January 1, 2009, are affirmed.
2. Taxable value, for the tax year 2009, of each parcel described in an appeal as referenced by the Case No. is:

**Case No. 09A 056**

Agricultural land	\$133,610.00
Farm Site	\$6,000.00
Home Site	\$10,000.00
Residence	\$78,690.00
Outbuildings	\$1,735.00
Total	<u>\$230,035.00</u>

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**Case No. 09A 062**

Agricultural land	\$72,105.00
Total	<u>\$72,105.00</u>

**Case No. 09A 063**

Agricultural land	\$241,180.00
Total	<u>\$241,180.00</u>

3. This decision, if no appeal is timely filed, shall be certified to the Gage County Treasurer, and the Gage County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2009).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2009.
7. This order is effective for purposes of appeal on October 13, 2010.

Signed and Sealed. October 13, 2010.

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Robert W. Hotz, Commissioner

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William C. Warnes, Commissioner

**SEAL**

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**